

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	<b><u>NOTICE</u></b>
Plaintiff,	)	
	)	
v.	)	Case No. 4:06CR00048-001
	)	
WILLIE FRENO PRICE,	)	By: Jackson L. Kiser
	)	Senior United States District Judge
Defendant.	)	

The above captioned case is scheduled for a sentencing hearing on May 15, 2007 at 10:00 a.m. The *Presentence Investigation Report* indicates that the Defendant has a total offense level of 31 and a criminal history category of VI which, under the guidelines, would result in a sentence between 188 and 235 months. I am considering departing from Sentencing Guidelines relying substantially on the Defendant's memorandum. Pursuant to Federal Rule of Criminal Procedure 32(h), I hereby provide notice to the parties of the grounds for my departure.

1) The Defendant plead guilty to distributing more than five grams, but less than 20 grams, of cocaine base in violation of 21 U.S.C. § 841(a)(1). In fact, he possessed 5.9 grams of cocaine base, a small amount at the low end of the count to which he pled guilty.

2) The Defendant has been designated as a "career offender" under U.S.S.G. § 4B1.1. This designation more than doubles the sentencing range. Instead of facing 84 to 105 months of incarceration, the Defendant faces 188 to 235 months.

3) I believe that the "career offender" designation is inappropriate for this Defendant for a number of reasons. First, one of the predicate controlled substance offenses for this designation is the Defendant's 1998 conviction for distributing an imitation controlled substance,

not actual narcotics.<sup>1</sup> The other predicate controlled substance offense is based upon a drug conviction for possession with intent to distribute of 3.77 grams of cocaine and 66.9 grams of marijuana. Again, the amounts in question are rather small and inconsistent with one who makes a career out of dealing illegal narcotics.

4) Moreover, the facts in the *Presentence Investigation Report* indicates that the Defendant's drug history is more consistent with that of an addict who traffics in small amounts of drugs in order to feed his habit than a regular dealer who makes a living through the illicit drug trade. As noted above, the amounts of drugs which the Defendant has been found guilty of possessing are small. No prior court has seen fit to incarcerate the Defendant for more than a year for any of his offenses, and the total amount of time for which has been sentenced for all of his offenses combined is less than three years.

The Clerk is directed to send a certified copy of this Notice to all counsel of record.

ENTERED this 11<sup>th</sup> day of May, 2007.

s/Jackson L. Kiser  
Senior United States District Judge

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<sup>1</sup>The Court calls to the counsel's attention a recent Fourth Circuit decision which deals with this issue. *United States v. Mills*, No. 06-4776, 2007 U.S. App. LEXIS 10803, \*15-18 (4th Cir. 2007).